

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREGORY HARDY,

CIVIL CASE NO.: 02-40255

Plaintiff,

v.

ROBERT VIETA,

HONORABLE PAUL V. GADOLA
U.S. DISTRICT JUDGE

Defendant.

/

ORDER ACCEPTING REPORT AND RECOMMENDATION

This is a *pro se* civil rights action, filed on October 4, 2002, pursuant to 42 U.S.C. § 1983.

Before the Court is Plaintiff's motion for summary judgment, Defendant's motion for summary judgment, and Magistrate Judge Steven D. Pepe's November 1, 2006 Report and Recommendation regarding the two motions. The magistrate judge's Report and Recommendation recommended that this Court deny both motions for summary judgment. Magistrate Judge Pepe also notified the parties that any objections must be filed within ten days of service. Defendant filed objections on November 9, 2006. Plaintiff did not file a response.

The Court's standard of review for a magistrate judge's Report and Recommendation depends upon whether a party files objections. If a party does not object to the Report and Recommendation, the Court does not need to conduct a review by any standard. *See Lardie v. Birkett*, 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002) (Gadola, J.). If a party does object to portions of the Report and Recommendation, the Court reviews those portions *de novo*. *Lardie*, 221 F. Supp. 2d at 807. The Federal Rules of Civil Procedure dictate this standard of review in Rule 72(b), which

states, in relevant part:

The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, or any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Fed. R. Civ. P. 72(b). Here, because Defendant filed objections, this Court reviews *de novo* those portions to which an objection has been made. *See Lardie*, 221 F. Supp. 2d. at 807. *De novo* review in these circumstances requires at least a review of the evidence before the Magistrate Judge; the Court may not act solely on the basis of a Magistrate Judge's Report and Recommendation. *See* 12 Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 3070.2 (1997); *see also* *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court may supplement the record by entertaining additional evidence, but is not required to do so. 12 Wright, Federal Practice § 3070.2. After reviewing the evidence, the Court is free to accept, reject, or modify the findings or recommendations of the Magistrate Judge. *See Lardie*, 221 F. Supp. 2d at 807. If the Court accepts a Report and Recommendation, the Court is not required to state with specificity what it reviewed; it is sufficient for the Court to state that it engaged in a *de novo* review of the record and adopts the Report and Recommendation. *See id*; 12 Wright, Federal Practice § 3070.2.

Therefore, in accordance with the requisite *de novo* review, the Court has reviewed the claims and filings that were before Magistrate Judge Pepe. After such a review the Court finds that Report and Recommendation prepared by Magistrate Judge Pepe is factually sound, legally correct, and in accordance with the Court of Appeals for the Sixth Circuit's opinion in this case. *See Hardy*

v. Vieta, 174 Fed. Appx. 923 (6th Cir. 2006).

ACCORDINGLY, IT IS HEREBY ORDERED that the Report and Recommendation [docket entry 139] is **ACCEPTED** and **ADOPTED** as the opinion of this Court.

IT IS FURTHER ORDERED that Plaintiff's motion for summary judgment [docket entry 97] and Defendant's motion for summary judgment [docket entry 120] are **DENIED**.

SO ORDERED.

Dated: February 7, 2007

s/Paul V. Gadola

HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on February 7, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Kevin R. Himebaugh, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Gregory Hardy.

s/Ruth A. Brissaud

Ruth A. Brissaud, Case Manager
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